

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL  
DEVELOPMENT PERMIT DENIED BY  
ISLAND COUNTY TO STATE OF  
WASHINGTON PARKS AND RECREATION  
COMMISSION

STATE OF WASHINGTON PARKS AND  
RECREATION COMMISSION,

Appellant,

v.

ISLAND COUNTY,

Respondent.

SHB No. 79-23

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the request for review of a substantial development permit denied by Island County to State of Washington, Parks and Recreation Commission, was brought before the Shorelines Hearings Board, David Akana, Chairman, Chris Smith, David W Jamison, and Robert Derrick, on August 2 and 3, 1979, in Lacey, Washington. Hearing Examiner William A. Harrison presided.

Appellant, State Parks and Recreation Commission, appeared by

1 James H. Davenport, Special Assistant Attorney General. Respondent,  
2 Island County, appeared by H. Clarke Harvey, Deputy Prosecuting  
3 Attorney.

4 Having heard the testimony, having examined the exhibits, having  
5 read the hearing memoranda, having heard the arguments of counsel,  
6 and being fully advised, the Shorelines Hearings Board makes the  
7 following:

8 FINDINGS OF FACT

9 I

10 This matter concerns a 112-acre waterfront tract bordering the  
11 Strait of Juan de Fuca on Whidbey Island. The tract was formerly held  
12 by the U. S. Navy and used as a small arms firing range, but was  
13 declared surplus to the needs of the United States. The land was  
14 therefore conveyed, in 1974, to the State of Washington, Parks and  
15 Recreation Commission (appellant) in consideration of the perpetual use  
16 of the premises for public park and recreation area purposes.

17 During its use as a firing range, much of the topsoil on the upland  
18 area was pushed up into berms for use as backstops, but the tract  
19 nevertheless contains an attractive mix of four ecosystems: a large,  
20 open field, a wooded area, a marsh and a low-bank beach area.  
21 The waterward view encompasses islands and shipping activity. The three  
22 landward sides of the tract are bordered by U. S. Navy land to the north  
23 and county roads to the east and south beyond which lies private land.

24 On July 1, 1978, the appellant, State Parks Commission, entered a  
25 concession agreement with a private party providing for private

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development of facilities and transfer thereof to the State Parks  
Commission over a 20 year period. These facilities are to be operated  
under supervision of the Parks Commission in accordance with established  
park rules and regulations.

On December 30, 1978, the State Parks Commission's concessionaire  
filed with Island County an application for a shoreline substantial  
development permit under the Shoreline Management Act of 1971, chapter  
90.58 RCW. The proposed development consisted of:

- (a) 119 campsites in the open upland field
- (b) 62 ft. service building, nearby
- (c) recreation facilities
- (d) trailer dump station
- (e) foot bridge across the salt marsh for access from the  
uplands to the beach
- (f) day use picnic area with bathroom facilities and 50  
car parking lot.

The campsites are designed to accommodate recreational vehicles and  
each site would measure 60' x 70' with all but a 10' parking lane in  
grass. Roads and parking lanes on the site would be gravel. The  
northern 50 campsites, the service building and the trailer dump  
station would be connected to a septic tank and drainfield system  
located directly north of the campsites. The service building would  
include a small store and a laundromat for the use of park visitors.  
Recreational facilities would include a swimming pool and a permanent  
baseball diamond. Since the distinguishing characteristic of the site  
is its natural character, there would be a nature trail with explanatory

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1 signs describing the ecology of the beach, marsh, woods and field. The  
2 would caution visitors to observe the natural surroundings with care.

3 There are three other state parks on Whidbey Island with overnight  
4 camping: Fort Casey, Deception Pass and South Whidbey. These are  
5 full an average of 58, 21 and 6 days per year respectively. A study  
6 of recreation conducted by Island County concluded that there is need  
7 for additional state parks in Island County.

8 On January 30, 1979, the Island County Planning Department issued  
9 a final environmental impact statement on the proposed development.  
10 Thereafter the Planning Commission recommended denial of the shoreline  
11 permit application indicating that day use activity would be preferred  
12 The Island County Commissioners denied the shoreline permit applicatio  
13 in April, 1979. From this, the State Parks Commission appeals.

## 14 II

15 The Shoreline Master Program adopted by Island County ("Master  
16 Program") was approved by State Department of Ecology order filed  
17 September 9, 1977. WAC 173-19-230. The master program designates the  
18 shoreline area at the subject site "conservancy" excepting a strip alo  
19 the northern edge which is designated "natural". The Board of County  
20 Commissioners accepted the report of its Planning Commission which  
21 inadvertently characterized the entire shoreline as natural.

22 The definition of a conservancy environment is:

23 " . . . an area which permits varying densities of human  
24 activity while retaining the aesthetic, cultural, ecological,  
25 historic and recreational resources." (Emphasis added)  
Master Program, P. 66.

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1 In a conservancy environment trails, interpretive centers and vista  
2 parking lots are a primary use while campgrounds are allowed as a  
3 secondary use. Master Program Use Requirement 16.21.035(B), Phase II  
4 p-3. In conservancy areas publicly owned areas should provide  
5 public access to the shorelines so long as the riparian rights of  
6 private property owners are not impinged upon. Master Program,  
7 Environment Development Policy No. 2, p. 67.

8 By contrast, the definition of a natural environment is:

9 ". . . an area relatively free of human influence, chiefly  
10 valued for its undisturbed natural features or processes"  
(Emphasis added). Master Program, P. 65.

11 In a natural environment the primary use is for natural park areas,  
12 while trails and interpretive centers are secondary uses and  
13 campgrounds are not allowed except as a conditional use. Master  
14 Program Use Requirement 16.21.035(A), Phase II, P. 3.

15 The Public Access Element of the Master Program states as its goal:

16 "Expand and encourage the development of safe, convenient,  
17 properly administered and diversified public access to public  
18 owned shorelines and tidelands of Island County in such a  
19 manner that intrusions created by public access will not  
20 infringe upon the personal or property rights of adjacent  
21 residents or in other respects will not have an adverse  
22 impact on the environment."  
23 Master Program p.26.

21 The area of the Strait of Juan de Fuca lying seaward from the line of  
22 extreme low tide is a "shoreline of state-wide significance".  
23 RCW 90.58.030(2)(e)(iii).

24 Two relevant general development policies of the Public Access Element  
25 state:

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- "2. Encourage the development of public access to all shorelines of state-wide significance.
  4. Encourage the acquisition of suitable upland shoreline properties to provide access to the public to publicly owned shorelands and tidelands."
- Master Program p.27

The Recreation Element of the Master Program states as its goal:

"The goals of the Island County Park Board are to provide the citizens of Island County and visitors with adequate recreation opportunities and facilities, and to assist in developing a park and recreation industry in Island County. The Park Board's responsibilities are to plan for, acquire, preserve, develop, and manage these facilities in cooperation with other governmental agencies in such a manner as to afford the maximum benefit to the greatest number of people pursuant to the appropriate laws of the State of Washington, and subject to the approval of the Island County Board of Commissioners."

Master Program, p 44, Island County Parks and Recreation Study, pp 3 and 4.

Several relevant general development policies of the Master Program's Recreation Element state:

- "1. Preserve regionally scarce and fragile natural resources when developing recreational uses.
  2. Provide for the acquisition of shorelands with high value for recreation before other development makes such action impossible.
  3. Provide a balanced choice of passive and active recreational opportunities county-wide.
  4. Shoreline recreational development within Island County will be consistent with established Goals and Policies of the County-wide Park and Recreation Study.
  5. Encourage innovative and cooperative techniques among public agencies and private persons in planning recreational opportunities.
  6. Provide for recreational development within shorelines of state-wide significance, which will produce long-term benefits to all Island County and State Citizens."
- Master Program, p.45.

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III

Respondent, Island County, raises six specific objections to the proposed development. We take these up now and make our findings as follows:

1. Density. The proposed 119 campsites on the 112 acre tract results in a density of slightly more than 1 campsite per acre. This is comparable to South Whidbey State Park and is not excessive.

2. Intensity of Use. The use of this tract for overnight accommodation of visitors, as proposed, has not been shown to be intensive over the entire site. The fragile marsh, however, should be afforded extra protection by the placement of an arboreal barrier in the field area. The purpose of such a barrier should be to channel the movement of visitors to the proposed board walk which is intended to cross the marsh. This would limit incursions into the marsh while allowing a full opportunity to view and appreciate it.

In addition, there should be no permanent or established baseball diamond at the site. While certain amenities should exist to supplement appreciation of the natural surroundings, these amenities should not dominate the surroundings or detract from their natural character. Baseball or other games can be played in a more loosely organized fashion in the open field without jeopardizing the natural character of the site which is its distinguishing characteristic.

3. Drainage. The use of gravel on roads and parking lanes will increase surface water runoff. A surface water interceptor drain should be placed between the campsites and marsh so as to channel surface water away from the marsh.

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1       Because of the marsh's fragility, there should be no laundry  
2 facilities at the site as this would increase the likelihood of phosphate  
3 discharges to the ground water. Phosphates are a durable pollutant and  
4 possess a capability to migrate through the soil to the marsh.

5       It has been proposed that topsoil pushed up into bullet-stopping  
6 berms be graded to form the septic tank drainfield. The interaction of  
7 lead contaminated soil overlying the drainfield with sewage effluent may  
8 cause toxic discharge. This discharge may then migrate to the  
9 marsh. Because of this, the soil comprising the bullet  
10 berms should be strained or skimmed to recover as many spent bullets as  
11 practically possible.

12       Although no definite septic system has been proposed, we take  
13 official notice that such a system must not discharge to surface water,  
14 such as the marsh involved here, under rules of the State  
15 Board of Health WAC 248-96-050. Any septic sewage system to be built  
16 on the site in question must first be permitted by the health officer  
17 charged with enforcing rules of the State Board of Health. WAC 248-96-  
18 080 and RCW 70.05.070. The instant application should be remanded to  
19 include a septic disposal system as required by WAC 173-14-110.<sup>1</sup> If the  
20 county Health Department finds that the proposed development complies with  
21 "local health and state regulations", a substantial development permit as  
22 conditioned herein should issue.

23

24       1. "If the development proposes septic tanks, does proposed  
25 development comply with local health and state regulations?" WAC 173-14  
26 -110(11) of Department of Ecology regulations listing the minimum  
information to be contained in an application for a shoreline substantial  
development permit.

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1       4. Wildlife. The proposed development is consistent with the  
2 continued presence of wildfowl and other wildlife. Past experience  
3 has shown that wildlife remained on the site even during its use as  
4 a firing range. The activity from the proposed development will,  
5 however, deprive some wildlife of its habitat. Some of this effect  
6 will be mitigated by the park requirement that all pets must be on leashes.

7       5. Aesthetics. The aesthetic character of the area will not be  
8 substantially changed except for the actual campground and office area.  
9 These should be screened by arboreal plantings along Crosby Road on  
10 both the eastern and southern boundaries of the site.

11       6. Transportation. Respondent, Island County, contends that  
12 access roads are inadequate for the proposed development. Specifically,  
13 Crosby road is somewhat narrow and contains two 90° turns at either end  
14 of the site. Nevertheless, Crosby Road has been approved by the County  
15 for over-size vehicle travel and presently accommodates recreational  
16 vehicles of the type which the proposed development would accommodate.

17                               IV

18       Any Conclusion of Law hereinafter stated which may be deemed a  
19 Finding of Fact is hereby adopted as such.

20       From these Findings, the Shorelines Hearings Board comes to these:

21                               CONCLUSIONS OF LAW

22                               I

23       Whereas here, there has been adoption and approval of a local  
24 shoreline master program our responsibility is to determine whether  
25 the proposed development is consistent with (a) that master program  
26 and (b) the provisions of the Shoreline Management Act, chapter 90.58 RCW.

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1        Master Program.    The Island County Master Program encourages

2    diversified public access to publicly owned shorelines of the County.

3    Public Access Element, Goal, p. 26; General Development Policies Nos. 2

4    and 4, p.27.    The site in question is publicly owned land which the

5    Master Program designates, primarily, as "conservancy" meaning that

6    varying densities of human activity are allowed.    Conservancy Definition

7    p.66.    The proposed boardwalk over the marsh, interpretive signs, and

8    day use facilities are within the primary uses set forth for this site

9    classification.    The campground and related facilities such as the service

10   building are within the secondary uses set forth for this site classifica-

11   tion.    The conditions imposed in Conclusion of Law IV hereof assuage the

12   Master Program's concern that public access might have an adverse effect

13   on the environment.    The conditioned development provides controlled,

14   practical access to public shorelines.

15        The Master Program's goal regarding recreation is to afford the

16   maximum benefit to the greatest number of people.    Recreation Element,

17   Goal, p.44.    The proposed development is consistent with this goal and

18   with the County's own Park Study calling for additional State Parks.

19   See Recreation Development Policies, No. 4, p.45 and Finding of Fact I,

20   hereof.

21        For these reasons, we conclude that the proposed development if

22   conditioned as provided herein would be consistent with the Island County

23   Master Program.

24        Shoreline Management Act.    It is the policy of this state, set

25   forth in the Shoreline Management Act, that:

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1 Alterations of the natural condition of the shorelines  
2 of the state, in those limited instances when authorized,  
3 shall be given priority for single family residences, ports,  
4 shoreline recreational uses including but not limited to  
5 parks, marinas, piers, and other improvements facilitating  
6 public access to shorelines of the state . . . .  
7 RCW 90.58.020. (Emphasis added.)

8 The proposed development is consistent with this legislative statement  
9 of preferred shoreline uses. It is further enacted that:

10 "...the public's opportunity to enjoy the physical and  
11 aesthetic qualities of natural shorelines shall be preserved  
12 to the greatest extent feasible consistent with the overall  
13 best interest of the state and the people generally.  
14 RCW 90.58.020. (Emphasis added.)

15 The proposed development thus implements a fundamental state policy  
16 favoring public access to shorelines of the state. The conditions  
17 imposed in Conclusion of Law IV assure that the proposed development  
18 "shall be designed and conducted in a manner to minimize, insofar as  
19 practical, any resultant damage to the ecology and environment of the  
20 shoreline area". RCW 90.58.020.

21 For these reasons we conclude that the proposed development if  
22 conditioned as provided herein would be consistent with the Shoreline  
23 Management Act, chapter 90.58 RCW.

## 24 II

25 The County Comprehensive Plan designates certain lands as  
26 "sensitive", including those designated, as here, "conservancy" or  
27 "natural" by the Shoreline Master Program. The Comprehensive Plan  
28 therefore parallels the Shoreline Master Program but **does not** add or  
29 subtract criteria relevant to issuance of a ~~shoreline~~ substantial  
30 development permit.

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1 III

2 Respondent, Island County, contends that the proposed development  
3 is inconsistent with the policy of the State Environmental Policy Act  
4 (SEPA), chapter 43.21C RCW. We have reviewed the impacts disclosed by the  
5 environmental impact statement which were raised by the parties and  
6 conclude that the proposed development as conditioned herein is consistent  
7 with the policies of SEPA.

8 IV

9 Summary. A substantial development permit with conditions provided  
10 below, shall issue provided that the County Health Department first  
11 finds that the proposed development complies with "local health and  
12 state regulations":

- 13 1. An arboreal barrier shall be placed in the field area  
14 upland of the marsh and running parallel to it from  
15 the northern boundary of the site to or near the  
16 forested area.
- 17 2. There shall be no permanent or established baseball diamond.
- 18 3. A surface water interceptor drain shall be placed between  
19 the campsites and marsh so as to channel surface water  
20 away from the marsh.
- 21 4. There shall be no laundry facilities which discharge into  
22 the on site septic system.
- 23 5. If soil containing spent bullets will be used in the septic  
24 drainfield, spent bullets shall be skimmed or strained so  
25 as to recover as many bullets as possible before operation  
26 of the drainfield.
- 27 6. There shall be an arboreal screen along Crosby Road on  
both the eastern and southern boundaries of the site so  
as to conceal the campground and office area from the  
view of persons off the site.

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7. The placement of developments shown on Exhibit A-4a shall be substantially as depicted there except that a) the marsh boardwalk may be relocated if doing so would have a more favorable environmental effect and b) vehicular campsites may be replaced, one for one, by tent campsites at the same general location or in the wooded area.

V

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board enters this

ORDER

This matter is remanded to respondent, Island County. If the county Health Department finds that the proposed development complies with "local health and state regulations," the respondent shall issue a substantial development permit with the seven conditions set out in Conclusion of Law IV.

DATED this 26<sup>th</sup> day of September, 1979.

SHORELINES HEARINGS BOARD

  
DAVID AKANA, Member

  
CHRIS SMITH, Member

  
ROBERT S. DERRICK, Member

  
DAVID W. JAMISON, Member

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